

AG Contract No.: KR02-0508TRN
ADOT ECS File No.: JPA 02-051
Project: Interstate 10 / Verrado Way TI
Section: Maintenance Agreement
TRACS No.: H 5449 01C
BUDGET SOURCE ITEM NO.: 28302

**AGREEMENT
(ADDITIONAL MAINTENANCE AND MAINTENANCE COSTS)**

BETWEEN
THE ARIZONA DEPARTMENT OF TRANSPORTATION
VERRADO DISTRICT 1 COMMUNITY FACILITIES DISTRICT
AND
VERRADO COMMUNITY ASSOCIATION, INC.

THIS AGREEMENT is entered into June 9, 2004, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "ADOT"), the VERRADO DISTRICT 1 COMMUNITY FACILITIES DISTRICT, formerly known as Whitestone District 1 Community Facilities District a community facilities district formed by the Town of Buckeye, acting by and through its BOARD OF DIRECTORS (the "Community Facilities District"), and the VERRADO COMMUNITY ASSOCIATION, INC., an Arizona nonprofit corporation (the "Verrado Community Association").

I. RECITALS

1. ADOT is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of ADOT.
2. The Community Facilities District empowered by Arizona Revised Statutes Section 48-709 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the Community Facilities District.
3. The Verrado Community Association has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this on behalf of the Verrado Community Association.
4. Pursuant to that certain Agreement between ADOT and DMB White Tank, LLC (the "Developer") (AG Contract No. KR00-1087TRN; ADOT ECS File No: JPA 00-79; TRACS No.: H 5449 S1D; Project: Traffic Interchange; Section: Interstate 10 (I-10) @ Airport Road), dated October 5, 2001, a full-diamond interchange on I-10 and the Airport Road alignment (the "Interchange") has been designed, funded, constructed and completed.

NO. 26880
Filed with the Secretary of State
Date Filed: 06/09/04
Janice K. Brewer
Secretary of State
By: Timothy D. Gueneau

5. The Interchange comprises public infrastructure that is financed with the Community Facilities District general obligation bond proceeds ("District Financed Infrastructure") subject and pursuant to the terms and conditions of that certain Development, Financing Participation and Agreement No. 1 (Whitestone District 1 Community Facilities District), dated, 2001, by and among the Town of Buckeye, the Community Facilities District and the Developer (the "District Development Agreement").

6. Upon completion of the Interchange, acceptance by the ADOT Phoenix District Maintenance Office, and dedication of new right of way for the Interchange, as previously agreed, ADOT will recommend adoption by Resolution, of the State Transportation Board, establishing and accepting the Interchange as an access controlled State Route and State Highway.

7. The design and construction of the Interchange includes certain architectural, landscape and aesthetic improvements, ("Enhanced Improvements"), that will result in additional maintenance costs ("Additional Maintenance Costs") that exceed the State's standard maintenance programmed for the traffic interchanges in the vicinity of the interchange, which improvements are generally described on Exhibit A, attached hereto and made a part hereof. It is further contemplated that certain elements of the improvements will result in maintenance that is outside the scope of maintenance performed by ADOT Phoenix District Maintenance for traffic interchanges ("Additional Maintenance"). As a result of incorporating the above referenced improvements in the design and construction of the Interchange, it is contemplated that the Additional Maintenance Costs for maintenance performed by the ADOT Phoenix District Maintenance Office, will include, all or some of the items listed on Exhibit B-1, attached hereto and made a part hereof, and that certain Additional Maintenance to be performed by others will include all or some of the items listed on Exhibit B-2, attached hereto and made a part hereof.

8. Pursuant to the District Development Agreement, it is anticipated that the Community Facilities District Board will levy and collect a maintenance and operation ad valorem tax (the "O&M Tax") not to exceed thirty cents (\$.30) per one hundred dollars (\$100.00) of the secondary assessed valuation of taxable property within the Community Facilities District. Pursuant to the District Development Agreement, the proceeds of the O&M Tax may be used by the District for any lawful maintenance, operational or administrative purpose related to the Community Facilities District including maintenance and operation costs and expenses of any District Financed Infrastructure. The Community Facilities District has determined that the Additional Maintenance Costs qualify as Enhanced Maintenance Expenses under the District Development Agreement, and that proceeds of the O&M Tax, will, after payment of all Community Facilities District administrative expenses, be reserved to pay the Additional Maintenance Costs incurred by ADOT, as herein provided.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The ADOT:

a. Will maintain, at its own cost and expense, the proper operation of the traffic signal system, and mainline and cross road roadway lighting systems, excluding the items described on Exhibit B-2, within the limits of ADOT right-of-way upon acceptance of the completed systems. The systems shall comply with the Standard Specifications and the project specifications.

b. Will maintain the Enhanced Improvements, described on Exhibit B-1, at no cost to ADOT and will semi-annually invoice the Community Facilities District for the Additional Maintenance Costs actually incurred by ADOT for maintenance of said Enhanced Improvements, up to but not in excess of the annual amount described on the Estimate of Annual Additional Maintenance Costs shown in Exhibit B-1.

c. Will not be obligated to continue maintenance of the Enhanced Improvements items described on Exhibit B-1, that result in Additional Maintenance Costs in excess of the Estimate of Annual Additional Maintenance Costs shown in Exhibit B-1.

d. Will not be obligated to perform the Additional Maintenance items described on Exhibit B-2.

e. Will provide the required licenses, permits or other right of entry as reasonably necessary to permit maintenance of the items described on Exhibit B-2.

f. All payments for additional maintenance costs will be remitted to the ADOT Phoenix District Maintenance Office, Budget Item Number 28302.

2. The Community Facilities District:

In consideration of the benefits to be derived by the Community Facilities District from the Interchange, including the public infrastructure resulting in the Additional Maintenance Costs, shall apply O&M Tax proceeds actually received to pay (a) Community Facilities District administrative expenses for the year in which such O&M Tax proceeds are received, and (b) if and to the extent such O&M Tax proceeds exceed Community Facilities District administrative expenses for such year, to Additional Maintenance Costs actually incurred by ADOT for the year in which such O&M Tax proceeds are received, not exceeding the annual amount described on the Estimate of Annual Additional Maintenance Costs shown in Exhibit B-1, within 30 days the Community Facilities District's receipt of each semi-annual invoice from ADOT described in Section II.1.b, respectively.

3. The Association:

a. If and to the extent the amount of Additional Maintenance Costs actually incurred by the State exceeds the funds available from proceeds of the O&M Tax for such year, after payment of the Community Facilities District administrative expenses, then the Association shall pay the deficit within thirty (30) days of the Association's receipt of an invoice from the State for any such deficit amount to ensure that the State will not be obligated to pay any Additional Maintenance Costs.

b. ADOT has no obligation to perform the Additional Maintenance described on Exhibit B-2. The Association will use a licensed and bonded contractor to perform the Additional Maintenance described on Exhibit B-2 and pay for such maintenance. The Additional Maintenance performed by the contractor shall comply with the ADOT standards and guidelines for Maintenance, provided by the ADOT Phoenix District Maintenance Office. All work shall be scheduled in advance with the Phoenix District Electrical Maintenance Supervisor. All work done in the state's right-of-way shall comply with the ADOT traffic control manual. All work done from platform and aerial lifting equipment shall be done on equipment that has been inspected and complies with all OSHA regulations. If and to the extent O&M Tax proceeds actually received in any year exceed the Community Facilities District Administrative expenses and Additional Maintenance Costs for such year, the Community Facilities District shall apply such excess O&M Tax proceeds to pay or reimburse the Association for the actual costs incurred by the Association to perform the Additional Maintenance. The Association will have no right to seek contribution or reimbursement by the Community Facilities District from O&M Tax proceeds received in any year following the year in which such Additional Maintenance is performed.

III. MISCELLANEOUS PROVISIONS

1. This agreement shall remain in full force and effect, in whole or in applicable part, until such time as the maintenance costs for the Interchange referenced herein no longer exceed the standard maintenance costs programmed by the ADOT for traffic interchanges in the vicinity of the Interchange. In the event the ADOT subsequently assumes the obligation for maintenance costs of Interstate 10 traffic

interchanges in the vicinity of the Interchange, that require maintenance costs that are comparable to the maintenance costs required for the Interchange, then and in such event, the District, by written amendment to this agreement, from further liability or obligation to pay the Additional Maintenance Costs.

2. This agreement shall become effective upon filing with the Secretary of State.
3. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.
4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this agreement.

5. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The provisions of A.R.S. § 41-1463 and Executive Order Number 99-4 issued by the Governor of the State of Arizona are incorporated by this reference as a part of this Intergovernmental Agreement.

6. Non-Availability of Funds: Any payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

7. In the event of any controversy that may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, MD 616E
Phoenix, Arizona 85007
FAX (602) 712-7424

Verrado District 1 Community Facilities District
c/o Town of Buckeye
District Manager
100 North Apache Road
Buckeye, Arizona 85326

Verrado Community Association, Inc.
7600 East Doubletree Ranch Road
Suite 300
Scottsdale, Arizona 85258
Attn: President

With a copy to:
Gust Rosenfeld P.L.C.
201 East Washington Street
Suite 800
Phoenix, Arizona 85004
Attn: Scott Ruby, District Counsel

9. Pursuant to Arizona Revised Statutes Section 11-952, (D), attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of the State of Arizona to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**VERRADO DISTRICT 1
COMMUNITY FACILITIES DISTRICT**

STATE OF ARIZONA
Department of Transportation

By 

Chairman, Board of Directors

By 

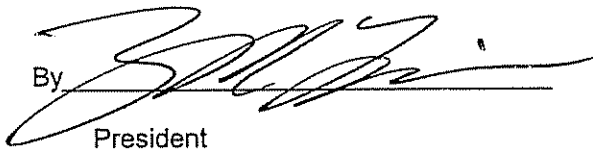
DANIEL S. LANCE, P.E.
Deputy State Engineer

ATTEST

By 

Clerk of the Board, Verrado District 1
Community Facilities District

VERRADO COMMUNITY ASSOCIATION, INC.

By 

President

EXHIBIT "A"

JPA 02-051

Enhanced Features of Design

Landscape

- Custom native desert landscaping
- Irrigation system

Structure

- Custom pedestrian barrier and painted black
- Custom crossroad light pole standards and fixtures, painted black, with metal halide luminaries (deck lighting)

Approaches & Intersections

- Standard intersection light poles and fixtures painted black with metal halide luminaries
- Crossroad sign structures painted black

EXHIBIT "B-1"

JPA 02-051

Enhanced Improvements to be Maintained by the State's Phoenix Maintenance District	Estimated Annualized Maintenance Cost
Landscaping	
Irrigation system (O&M) ¹	\$27,300
Trimming	\$ 3,500
Weed control	\$ 6,600
Replacement ²	\$ 3,750
Litter & debris removal ³	\$15,200
Electrical power	\$ 2,400
Structure	
Custom ped barrier ⁴	\$ 4,650
Intersections & Approaches	
Electrical Power	\$2,400
Subtotal	\$65,800
Contingency (10%)	\$ 6,580
Total Estimate of Annual Additional Maintenance Cost	\$72,380

¹ Includes \$22,500 annual operations cost and \$96,000 system replacement cost annualized over 20 years

² Provides for 50% total landscape replacement cost (\$75,000) annualized over 20 years

³ Litter and debris removal assumed to provide for additional costs associated with increased frequency of litter and debris patrol above and beyond standard ADOT practice

⁴ Includes \$3,100 annual allowance for painting maintenance and \$31,000 replacement cost annualized over 20 years

EXHIBIT "B-2"

JPA 02-051

Enhanced Improvements to be Maintained by Other	Estimated Annualized Maintenance Cost
Structure	
Deck lighting ⁵	\$4,100
Intersections & Approaches	
Intersection lighting ⁶	\$3,300
Sign structures ⁷	\$2,000
Subtotal	\$9,400
Contingency (10%)	\$940
Total Estimate of Annual Additional Maintenance Cost	\$10,340

⁵ Allowance for semi-annual painting (\$4,500), pole replacement cost of \$9,000 and metal halide fixture replacement cost (\$6,000) annualized over 20 years, and annual operational cost of metal halide luminaire (\$855)


⁶ Includes semi-annual maintenance painting of black poles (\$1,800), annual operational cost (\$1,282) and semi-annual replacement cost (\$2,250) of metal halide luminaires annualized over 20 years

⁷ Semi-annual re-paint of 2 crossroad sign structures (\$4,000) annualized over 20 years

APPROVAL OF THE VERRADO COMMUNITY ASSOCIATION, INC.

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, TRANSPORTATION PLANNING DIVISION, and VERRADO COMMUNITY ASSOCIATION, INC. and declare this agreement to be in proper form and within the powers and authority granted to the Community under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 16th day of April, 2004

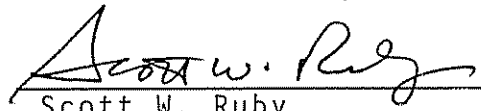


Attorney Scott B. Carpenter

APPROVAL OF THE VERRADO DISTRICT 1 COMMUNITY FACILITIES DISTRICT

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, TRANSPORTATION PLANNING DIVISION, and VERRADO DISTRICT 1 COMMUNITY FACILITIES DISTRICT and declare this agreement to be in proper form and within the powers and authority granted to the Community under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 18th day of May, 2004



Scott W. Ruby
Attorney



TERRY GODDARD
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE: 602.542.8855

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR02-0508TRN (**JPA 02-051**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: June 7, 2004

TERRY GODDARD
Attorney General

A handwritten signature in cursive script, reading "Susan Davis", written over a horizontal line.

SUSAN E. DAVIS
Assistant Attorney General
Transportation Section